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6 Attorneys for Defendants

7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE DISTRICT OF ARIZONA**

9 Enrique Montijo, No. CV 13-1439-TUC-DCB

10 Plaintiff,

11 v.

12 Charles L. Ryan, et al.,

**DEFENDANTS' ANSWER TO  
FIRST AMENDED COMPLAINT**

[Jury Trial Demanded]

13 Defendants.

14  
15 Defendants Bennett, Robinson, Ryan, Suarez, and Swaney answer Count II of  
16 Plaintiff Montijo's First Amended Complaint as follows:

17 **A. PARTIES & JURISDICTION**

18 1. Answering ¶ 1, Defendants lack knowledge or information sufficient to  
19 form a belief about Plaintiff's current residence and deny that Plaintiff is currently in the  
20 physical custody of the Arizona Department of Corrections ("ADC").

21 2. Answering ¶ 2, Defendants admit that at the time relevant to Plaintiff's  
22 allegations, he was in the custody of the ADC.

23 3. Answering ¶ 3, Defendants admit that during the relevant time, they were  
24 each employed by the Arizona Department of Corrections.

25 4. Answering ¶ 4, Defendant Ryan admits that he is the Director of ADC and  
26 that his powers and duties are outlined under A.R.S. § 31-201.01 and § 41-1604.

1       5. Answering ¶¶ 5-6, Defendants admit that the Court has jurisdiction over this  
2 action pursuant to 42 U.S.C. § 1983 and generally deny that jurisdiction exists on any  
3 other basis.

## B. STATEMENT OF FACTS

5       6. Answering ¶¶ 7-38, Defendants deny all of the material allegations therein  
6 and specifically deny that they deprived Plaintiff proper medical care or access to medical  
7 care in violation of any constitutional or other federal civil right.

### **C. CAUSE OF ACTION**

## **COUNT II – DELIBERATE INDIFFERENCE**

10       7. Answering ¶¶ 47-58, Defendants deny all of the material allegations therein,  
11 specifically deny that they were deliberately indifferent to Plaintiff's health or medical  
12 care, that any custom or policy of deliberate indifference existed, or that they violated any  
13 of Plaintiff's constitutional or other federal civil rights including, but not limited to his  
14 Eighth Amendment rights, and specifically deny that they injured or caused Plaintiff to  
15 suffer any injuries.

16       8. Defendants deny each and every allegation of Plaintiff's Complaint that is  
17 not specifically admitted herein.

18       9. Defendants affirmatively alleges that Plaintiff fails to state a claim in that  
19 the First Amended Complaint fails, as a matter of law, to allege sufficient affirmative  
20 involvement to impose supervisory liability against Director Ryan.

21 ||| 10. Defendants further assert the following affirmative defenses:

- 22                     (a) failure to state a claim upon which relief can be granted;

23                     (b) statute of limitations;

24                     (c) failure to exhaust available administrative remedies;

25                     (d) absolute immunity;

26                     (e) Eleventh Amendment immunity;

- (f) qualified immunity;
  - (g) failure to state a claim for actual, compensatory, or punitive damages;
  - (h) official capacity claims are barred under 42 U.S.C. § 1983;
  - (i) the doctrine of respondeat superior does not apply in a civil rights action;
  - (j) any other affirmative defenses recognized or authorized under Rule 8(c), Fed. R. Civ. P.; and any and all privileges, defenses and immunities under statute and common law which may be found applicable during the course of discovery.

WHEREFORE, Defendants Bennett, Robinson, Ryan, Suarez, and Swaney respectfully request that the Court enter its Order dismissing Plaintiff's First Amended Complaint with prejudice and its Judgment in their favor, awarding them costs of defense and attorney's fees pursuant to 42 U.S.C. § 1988, and granting such other and further relief as to it seems just and proper.

RESPECTFULLY SUBMITTED this 7th day of August, 2014.

**THOMAS C. HORNE  
ATTORNEY GENERAL**

s/ Claudia Acosta Collings  
**CLAUDIA ACOSTA COLLINGS**  
Assistant Attorney General  
Attorneys for Defendants

## CERTIFICATE OF SERVICE

2 I hereby certify that on the 7th day of August, 2014, I electronically filed the foregoing  
3 Document with the United States District Court using the CM/ECF System for filing and  
transmittal of a Notice of Electronic Filing to the following CM/ECF registrant:

4 Stephen M. Weeks  
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